

IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0003 OF 2004S  
(High Court Criminal Action No.HAM047of 2003S)

BETWEEN:

SEREMAIA BALELALA

*Appellant*

AND:

THE STATE

*Respondent*

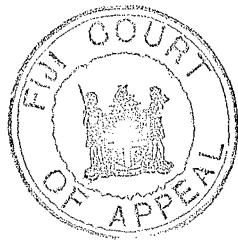
**APPLICATION FOR LEAVE TO APPEAL AGAINST  
CONVICTION AND SENTENCE**

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The applicant Seremaia Balelala was convicted in the Magistrates Court on 1 count of wrongful confinement and 3 counts of rape. In view of the seriousness of the case he was sentenced in the High Court on the 23<sup>rd</sup> December 2003 to a total of 11 years imprisonment. He now seeks leave to appeal against both conviction and sentence. Of the grounds on which he relies only one has merit. The Magistrate correctly advised himself of the rule applicable in Fiji that it is dangerous to rely upon the uncorroborated evidence of a complainant. He also noted that it was open to him to convict in the absence of corroboration and went on to consider whether there was any corroboration in the evidence which had been called before him. The Magistrate considered that the evidence of the spermatazoa in the swab taken from the vagina of the complainant was corroborative of her evidence. There was no evidence that the spermatazoa so identified came from the accused, accordingly although the evidence may have been seen as confirmatory it could not amount to corroboration because it did not directly implicate the accused. In the same way medical evidence of bruising on the complainant was confirmatory but did not amount to corroboration and the same comments apply to marks found on the legs of the victim by the investigation police officer and by the finding of her

water bottle. Under those circumstances it is appropriate that this matter be further considered and leave is accordingly granted to the applicant to bring his appeal against both conviction and sentence to this court.

Dated at Suva this 18<sup>th</sup> day of March, 2004.



  
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Gallen, JA